

CLIFFORD PRISBREY

IBLA 76-220

Decided March 1, 1976

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting application for homestead entry (U 30358).

Affirmed.

1. Applications and Entries: Generally -- Homesteads (Ordinary):
Lands Subject to -- Withdrawals and Reservations: Reclamation
Withdrawals

An application to make homestead entry on land embraced in a first form reclamation withdrawal is property rejected.

APPEARANCES: Clifford Prisbrey, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Clifford Prisbrey has appealed from a decision of the Utah State Office, Bureau of Land Management, dated June 26, 1975, rejecting his application, filed June 11, 1975, to make a homestead entry on lands in secs. 13 and 14, T. 42 S., R. 14 W., S.L.M., Utah. The State Office decision stated that appellant's application had to be rejected because the lands described therein were withdrawn from appropriation under the public land laws and were reserved for the Dixie Project by Public Land Order (PLO) 4036, 31 F.R. 8240 (1966). The State Office further added that the application could not be held in suspense pending possible future availability of the land, citing 43 CFR 2091.1; Ralph J. Mellin, 6 IBLA 193 (1972).

In his statement of reasons on appeal, appellant asserts that the Bureau of Reclamation and the Washington County Water Conservancy District of Southern Utah have informed him that the Dixie Project has been canceled. Appellant concludes, therefore,

that the withdrawal order should no longer be permitted to preclude homestead entry. Appellant has requested a hearing on the matter.

[1] Pursuant to the authority contained in section 3 of the Act of June 17, 1902, as amended, 43 U.S.C. § 416 (1970), the lands described in appellant's homestead entry application were included within a first form reclamation withdrawal by PLO 4036 which removed the lands from all forms of appropriation under the public land laws. Accordingly, it was proper for the State Office to reject appellant's homestead entry application. 43 CFR 2322.1-1; 43 CFR 2511.0-8; Richard E. Crill, 18 IBLA 428 (1975); Carl D. Qualman, 18 IBLA 83 (1974).

Appellant asserts that the lands are no longer being used for the purpose of the withdrawal, namely, the Dixie Project. Even assuming this assertion is correct, our decision remains unaltered since the withdrawal is still in effect and continues to preclude homestead entry on the land. Ralph J. Mellin, supra at 194.

As this case deals solely with a matter of law, we find no basis for ordering a hearing, and appellant's request is denied. 43 CFR 4.415.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

